

Exhibit 126

Subject: FW: Comments on Amendment for Westpoint
Date: Monday, May 20, 2013 3:55:38 PM Pacific Daylight Time
From: Erik Buehmann
To: Brad McCrea, John Bowers, Adrienne Klein, Ellen Miramontes

FYI

From: Mark Sanders <mark@westpointharbor.com>
Date: Monday, May 20, 2013 3:53 PM
To: Erik Buehmann <erikb@bcdcc.ca.gov>
Cc: Mark Sanders <mark@westpointharbor.com>, "moc@paspeech.com" <moc@paspeech.com>, Doug Furman <doug@westpointharbor.com>
Subject: Comments on Amendment for Westpoint

Hello Erik,

as we discussed, there are some corrections I see in the new draft in addition to the items you tagged for discussion. Most are innocuous and listed below, and I also noted some that will involve discussion too. I am glad for the work you put into this --the draft is a great improvement and cleared up many of the conflicts and errors which have been such a headache.

✓ **Page 2 item 13.** This should read "...maintain one small building, approximately 1000 square feet...". This is correctly shown in three other locations including page 9 item d. The actual design approved by the DRB has restroom/shower structure separated from the harbormaster office by a breezeway, and together with the laundry totals about 1000 sf. *Still need plan approval*

12 not 8 pa spaces ✓ **Page 2 item 14.** There are actually six separate parking lots in the completed harbor, not a single 604-space parking lot. Phase 1 includes eight designated public parking spaces (as shown on the site drawing package) and the remaining 4 are part of the retail parking lots in phase 3. Change to "...179 spaces of a total 604 spaces (8 of which are for public access)". *→ make it clear: a other way*

? no **Page 2 item 15, line 5.** there are overlooks on the east and west ends of the marine entrance, but the east end is completed in phase 2 when the path to the overlook is built and opened. Change to "...overlook (singular) at the west end of the harbor entrance adjacent to Westpoint Slough..."

✓ **Page 3, item 18.** I'm allowed to install signs at the channel entrance to the harbor but the entrance to Westpoint Slough is part of the Federal Channel controlled by the Port of Redwood City. The Port maintains the no-wake buoy at that point, and I remind them when it needs maintenance. Suggest you change to "...maintain no-wake zone markers at the channel entrance to Westpoint in cooperation with the Port of Redwood City, and at the entrance of Westpoint Harbor".

✓ **Page 3 item 5. line 4.** Should read "...a ten to fifteen foot-wide path...". This change is correct in other parts of the doc.

✓ **Page 4, item 9, line 2.** Should read "...spaces of a total of 604 parking spaces...". (multiple parking lots). *Phase 2 added*

? no **Page 4, item 2.** Please add "...facilities that may include...". I don't want things I am *authorized* to do to be misconstrued as mandatory in the future. Redwood City required me to list everything we *might* want to build so the would only issue one permit. So it includes structures (like covered slips) which may never be built. *purpose required*

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same fence protecting the marshes along Westpoint Slough, yet they are currently different heights. Change to "...maintain a five foot fence...").

✓ Page 4, item 5. As above. Change to "...maintain a five foot fence...".

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(Phase 1a parking is 179; Phase 1b is 112; Phase 2 is 116 and Phase 3 is 197 for a total of 604)

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request a T.E. separate amt

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Page 7, item B1, line 6. I researched to find out why marinas (and most states) don't allow swimming or fishing inside of harbors and marinas. The reason is **drowning**--25% of all boats have dangerous amounts of electrical leakage into the water, and its believed a majority of fatalities in marinas are actually electrocutions. This is why divers disconnect power from vessels before they clean the bottoms. Fishing lines in salt water become good conductors. Moreover, Westpoint Harbor Rules and Regs and BMPS (given to BCDC in 2006) specify no swimming or fishing in the marina. Change this to read "no swimming or fishing inside of the marina basin". *RRR post sign*
what about legal instrument?

no Page 9, item 4a. Should read "...the entire Phase 1 parking area (291 spaces) is open..."

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Line 9 "belvedere" should be singular (the second overlook is part of Phase 2 not 1b).

• Line 11, et al. Completion date of August 31, 2013, is no longer possible for landscaping, paths, furnishings etc. It was set a year ago and we will need to revise it to something realistic. *why? when?*

no Page 10 item j. should read "east of the harbormaster building to boat launch ramp" to clarify the extent of Phase 1 work.

no Page 10, Phase 2 and 3. Change to read "...as part of Phase 2 and Phase 3..", delete to "prior to the use of any structure" which is impractical (boardwalks patios, greens etc must be designed and built as part of each structure; fuel dock will go in before the boatyard, etc).

no Page 10, item f. This requires widening the west pathway which is actually replaced by a 15-foot boardwalk (so widening a DG path doesn't make sense). Also it references item d of Phase 1b which has to do with a public restroom, not paths.

Erik the items below may need discussion this coming Thursday:

moved from some where else
Page 10, item b under Phase 3. Adding two more restrooms is a new requirement which significantly alters the permit. In fact we will want to include public restrooms in the boatyard and retail areas, and they can be added as part of the amendments for those phases, but it can't be added now, when Phases 2 and 3 are not even defined.

Page 33, para 5. Change to "...around the future Phase 2 and 3 areas..." (both areas must be secured). Also, delete statement that "the permittee is concerned" and insert "*as required by the City of Redwood City for safety reasons*". **Para 6.** Delete "provides for two (additional) public restrooms in Phase 3).

Page 34, para 1. Restricting fishing and swimming in the basin is actually because of BMP's for safe harbors.

- **Page 34, para 3.** It is my belief that several new conditions in the draft materially alter the permit as authorized by the commission. This includes transient dock conditions; the sequence of construction; and additional structures.

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Page 33, para 3. This is not correct. The construction sequence during Phase 1 was discussed at length at the 2006 DRB meetings, and a schedule was presented to staff. In fact a primary reason for the DRB meetings was to modify the permit to allow the marina to open with minimal improvements, since site construction would go on for several more years. More recently photos were presented to staff showing the impossibility of completing paths, landscaping and other improvements before the marina dredging was complete; before rip-rap was installed; and before underground utilities were installed. This was corrected in the permit except one location, which is the item cited in this paragraph.

- no*
- **Page 16, item O2.** I suggest you add language encouraging permittees to adhere to "Clean and Green Harbor guidelines" (oil-absorbant pads in engine sumps, environmentally friendly cleaners, etc). This is where clean marinas are going and the Clean Marina Program being pushed by the Coastal Commission and MRA are a good thing for BCDC to support. We include all clean marina items in our BMP's and Rules and Regs.

Page 17, item P1. A lot of history is behind dedicated liveaboard slips and reporting locations and occupants of liveaboard slips, largely based on sewage treatment. Big reasons for having sewage facilities at every slip are greater flexibility, a much cleaner harbor, and to dispense with reporting liveaboards and dedicated slips, as long as we stay within 10%. As a practical matter our liveaboards move about all the time, and we manage their location along with transient boaters continuously. This requirement is based on conditions that don't exist at Westpoint Harbor. Moreover, item 6 "Enforcement Alternatives" includes remedies that we have already installed!

Page 17, item P4. Tidal circulation is not controllable, and once the basin is built, circulation is a matter of the entrance opening size, marina basin depth, and the tide gods. It probably makes sense to only address items we can control. *chudger*

Page 17, item 7. I recognize the McAteer-Petris Act defined houseboats and floating homes as the same, but its incorrect and every boater knows the difference. This makes the agency appear as if they don't understand boating and I urge you to fix this and conform to common nomenclature.

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Salt Pond Issue. Page 31 states this site satisfies BCDC criteria for a salt pond (diked for the purpose of solar evaporation of Bay water in the course of salt production). This is not actually correct as we have good documentation showing this was never the case. More importantly, this conclusion was added after the project was presented to the commission, and subsequently discussed by the Commission, and they instructed staff to change

language to "it is the *opinion* of BCDC staff that this is a former salt pond", but this did not occur. I understand that you may not want to tackle this on Thursday, but its important we not lose sight of the point.

Page 27, para 2. Notes that dredging is expected every ten years. We are getting close to that point and I am already discussing it with the Army Corps. It is likely we will need to clear high spots and sloughing edges in the harbor soon.

Finally, I would like to spend a little time talking about the future phases. With the closure of Coyote Point's fuel dock, there is no fuel available in the South Bay. This is a very negative impact on recreational boating and makes our planned fuel dock urgent and I hope to install a system early next year if practical. At the same time I want very much to get going on a restaurant and coffee shop with boardwalk so its likely parts of phase 3 will be going forward at the same time phase 2 is being built out.

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Date: Monday, May 20, 2013 3:53:26 PM Pacific Daylight Time

From: Mark Sanders

To: Erik Buehmann

CC: Mark Sanders, moc@paspeech.com, Doug Furman

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statement that "the permittee is concerned" and insert "*as required by the City of Redwood City for safety reasons*". **Para 6.** Delete "provides for two (additional) public restrooms in Phase 3).") oh

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dock, there is no fuel available in the South Bay. This is a very negative impact on recreational boating and makes our planned fuel dock urgent and I hope to install a system early next year if practical. At the same time I want very much to get going on a restaurant and coffee shop with boardwalk so its likely parts of phase 3 will be going forward at the same time phase 2 is being built out.

Subject: Kevin Stephens' 1.2.13 email

Date: Wednesday, January 9, 2013 5:02:11 PM PT

From: Ellen Miramontes

To: Brad McCrea, Erik Buehmann, John Bowers, Adrienne Klein

All,

I wanted to check in to see how we plan to proceed with Westpoint. Sounds like Kevin and Mark developed a compromise position on the dock access as described below. We should probably respond before too much time passes.

I provided drawing comments back to them on 12.22.12 so am waiting for revised plans now.

Let me know your thoughts - Ellen

From: Kevin Stephens <kstephens@kevinstephensdesign.com>

Date: Wednesday, January 2, 2013 3:32 PM

To: Brad McCrea <bradm@bcdca.gov>, Erik Buehmann <erikb@bcdca.gov>

Cc: Mark Sanders <mark@westpointharbor.com>, Ellen Miramontes <ellenm@bcdca.gov>, "moc@paspeech.com" <moc@paspeech.com>

Hello Brad and Erik,

Happy New Year! Thank you for the productive meeting re WPH before Christmas. When finished we had reached agreement on most items except access to WPH docks for pedestrians. We trust these agreed-upon changes will be reflected in the amended permit Erik is preparing.

Following the meeting, Maureen, Mark and I had an in-depth discussion about the public access for pedestrian viewers question. You recall at the end of the meeting Brad proposed "N dock" as a potential dock open to the public and we considered if it could be "stepped" into the development plan in Phase 3 when the restaurant is built. That was the way we left it.

At lunch that day, Mark and Maureen and I continued to discuss this issue. Your goal is for some "up close and personal" public access at dock level. Mark's concern is boaters' privacy and security, visitor safety, and harbor liability and insurability. The harbor's insurance carrier stated it will not continue the marina's policy if dock security is not maintained. He has also been advised his boating infrastructure grant for transient docks requires secured gates, and finally gated security is considered essential to compete in the market and attract quality boats.

Mark's plans always envisioned a "free" dock for boaters to access the restaurant from the water. As such boating customers and pedestrian viewers alike are able to get on the dock—thus meeting your goal. In fact it will be an extension of the boardwalk. Similarly, the fuel dock will be "free" and accessible from the water and land, and adjacent to the Bay Trail—a second dock to meet your goal. In both cases the docks provide short-term tie-ups but no overnight transient berthing. The fuel dock is part of Phase 2 and the restaurant dock is part of Phase 3.

Mark will seek assurance from the carrier that because these docks are actively managed by restaurant and boatyard personnel, and since vessels are not left unattended for long periods, insurance coverage will continue.

I hope you are agreeable to this method of achieving your goal of pedestrian access onto docks while protecting the harbor's need to provide secure berthing for its customers, and to operate its transient dock and free docks in accordance with industry norms.

I have taken a stab at descriptive language to define the two free docks and transient docks, at least as a starting point. Let me know if you would like to schedule another meeting or a conference call to discuss. We look forward to wrapping up the amendments

In Phase 2 a fuel dock will be built at the east side of the marina basin as part of the boatyard construction. At the completion of Phase 2 the fuel dock will be designated a "free dock", accessible by water for short-term vessel tie-up for fueling and by pedestrians with access from the Bay Trail, and open during normal operating hours

As part of phase 3 development a restaurant will be constructed at the west side of the site. The adjacent dock in the northwest corner of the marina (dock N) will be designated at the completion of the restaurant for tie-ups for restaurant visitors' boats. The restaurant will have designated security personnel to monitor that dock, at which time the dock will be designated a "free dock", also accessible to the public from the land side during operational hours.



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